

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0396 RO

Responsible Officer

Sales and Use Tax

For Tax Period: 1993-1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Responsible Officer Liability – Duty to Remit Sales and Use Taxes

Authority: IC 6-2.5-9-3; Indiana Department of Revenue v. Safayan (1995) 654 N.E.2nd 270.

Taxpayer disputes the determination that he had a duty to remit the corporation's sales and use taxes.

STATEMENT OF FACTS

Pursuant to a 1996 audit, a corporation was assessed additional sales and use taxes for the period 1993-1995. Taxpayer was president of the corporation until his resignation on January 10, 1996. After the audit, Taxpayer was personally assessed the corporate sales and use taxes as the responsible officer. Taxpayer timely protested the personal assessment of the corporate sales and use taxes.

RESPONSIBLE OFFICER LIABILITY-DUTY TO REMIT SALES AND USE TAXES

DISCUSSION

The proposed sales and use tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan (1995) 654 N.E. 2nd 279, page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." As president of the corporation during the audit period, 1993-1995, Taxpayer had the authority to supervise and direct the operations of the corporation. This includes the authority to see that the taxes are paid. Taxpayer was a responsible officer with the duty to remit sales and use taxes to Indiana during the tax period.

Taxpayer resigned as president of the corporation on January 10, 1996. Taxpayer presented adequate evidence that he was not a responsible officer of the corporation at the time the audit was performed. Taxpayer did not even know of the audit and resulting tax liability until he received the billing as responsible auditor. Taxpayer contends that since he did not know of the audit process or have a chance to participate in that audit process, he cannot be held responsible for the tax liability generated by that audit.

The fact that Taxpayer was not a responsible officer at the time of the audit does not change the fact that he was president during the tax period and had the duty to properly and timely remit all sales and use taxes due to Indiana.

FINDING

Taxpayer's protest is denied.